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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
TOWA, RENE T	

ART UNIT	PAPER NUMBER
3736	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/761,962	TAKIZAWA ET AL.	
	Examiner	Art Unit	
	RENE TOWA	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 December 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,3,10,11 and 13-43* is/are pending in the application.

4a) Of the above claim(s) *3,11,13-28,30 and 32-43* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,10,29 and 31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *12/19/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This Office action is responsive to an amendment filed December 19, 2007. Claims 2-3, 10-11 and 13-43 are pending. Claims 3, 11, 13-28, 30, 32-43 are withdrawn. Claim 2 has been amended. Claims 1, 4-9 and 12 have been cancelled. No new claim has been added.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. **Claim 2** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman (US 3,540,433) in view of Greutert (FR 2,492,648).

In regards to **claim 2**, **Brockman** discloses a medical retrieval device 20 comprising a catch unit 24 capable of catching the medical capsule discharged from a human body (see figs. 1-5; col. 3, lines 1-5, 7-13 & 15-22; col. 5, lines 48-67).

Brockman discloses a medical capsule retrieval device 20 wherein the catch unit 24 is a net 36 capable of retrieving or catching the medical capsule (see figs. 1-5; col. 3, lines 1-5, 7-13 & 15-22; col. 5, lines 48-67).

Brockman discloses a device, as described above, that fails to explicitly teach a magnet for magnetically attracting a magnetic material.

However, **Greutert** teaches a reusable metallic mesh or net filter 1 (see figs. 1-4).

However, Brockman discloses a method of collecting feces for later study, which method may be repeated several times over a predetermined amount of time. Since

Greutert discloses a mesh or net element for continuous re-use thereof, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the method of Brockman with a metallic (magnetic material) net as taught by Greutert in order to continuously reuse the same metallic net; for example, the net would need to be capable of repeated cleaning and use without compromising its pore size so as to maintain its ability to stop the feces.

Moreover, since Even moreover, since

a) one of ordinary skill in the art could have combined the teachings of Brockman with those of Greutert as suggested in the rejections supra by known methods,

b) in the combination, each element (i.e. the strainer of Brockman and the metallic characteristics of the filter of Greutert) in the combination would have performed the same function as it did separately; and,

c) one of ordinary skill in the art would have recognized that the results of the combination were predictable,

The Examiner submits that combining prior art elements according known methods to yield predictable results has recently been held to be obvious (see KSR International Co. v. Teleflex Inc., 550 U.S.---, 82 USPQ2d 1385 (2007)).

4. **Claim 10** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman ('433) in view of Greutert ('648) further in view of Slover et al. (US 4,445,235).

Brockman as modified by Greutert discloses a system, as described above, that teaches all the limitations of the claim except for a bag to enclose the specimen together with a unit of the specimen retrieval device.

However, Slover et al. disclose a device comprising a bag to enclose a specimen together with a catch unit of the specimen retrieval device for temporary storage or transport, after the specimen has been collected (see column 4/lines 21-25).

Since Brockman teaches a sample retrieval device comprising a catch unit and Slover et al. teach a bag for a storing a catch unit of the specimen retrieval device for temporary storage or transport, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the device of Brockman as modified by Greutert, above, with a bag as taught by Slover et al. in order to store and/or transport the collected specimen (see Slover et al., column 4/lines 21-25).

5. **Claims 29 and 31** are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall (US Patent No. 6,632,175) in view of Brockman ('433).

In regards to **claim 29**, *Marshall teaches a retrieval method for retrieving a medical capsule, comprising a step of catching the medical capsule discharged from within the human body (see fig. 2; column 3/lines 58-63) except for an explicit teaching of a step for catching the medical capsule with a catch unit.*

However, Brockman discloses a method for catching intestinal parasites using a feces strainer 20 including a catch unit 24 upon exiting the intestine through the rectum (see figs. 1-5; col. 3, lines 1-5, 7-13 & 15-22; col. 5, lines 48-67).

Since Marshall teaches a method for retrieving a medical capsule upon exiting the intestine through the rectum (i.e. via excrement) (see fig. 2; column 1/lines 44-46; column 3/lines 58-63) and Brockman discloses a method for catching small intestinal parasites upon exiting the intestine through the rectum (see figs. 1-5; col. 3, lines 1-5, 7-13 & 15-22; col. 5, lines 48-67), it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to modify the method of Marshall to include a catching step as taught by Brockman in order to provide a convenient and reliable means for the collection of intestinal discharge for diagnostic purposes (see Brockman, col. 5, lines 48-67).

In regards to **claim 31**, *Marshall as modified by Brockman, above, discloses a retrieval method for retrieving a medical capsule, as described above, that teaches all the limitations of claim except for an explicit teaching of the step of washing the medical capsule.*

However, the Examiner takes official notice that since Marshall teaches a method wherein a reusable medical capsule is retrieved after discharge from a human body, the method inherently includes the step of washing the medical capsule with a washing unit since the steps of Marshall require, inter alia, swallowing the capsule "through the mouth" and discharging the capsule "through the rectum" (See Marshall, fig. 2; column 1/lines 44-46; column 3/lines 58-63).

As such, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the method of Marshall as modified by

Brockman, above, with a washing step, as claimed, in order to more explicitly disclose the sanitary condition of the capsule at the time of swallowing.

Response to Arguments

6. Applicant's arguments with respect to claims 2 & 10 have been considered but are moot in view of the new ground(s) of rejection.

7. Applicant's arguments filed December 19, 2007 have been fully considered but they are not persuasive. Applicant argues that Brockman fails to disclose or suggest a retrieval method. This argument has been considered but has not been deemed persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the instant case, Marshall teaches a method of retrieving a capsule through feces whereas Brockman teaches a method of collecting feces through a strainer for later analysis. As such, the combination pertains to a method of collecting a swallowed capsule through the feces using a strainer as taught by Brockman as established in the rejections supra.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RENE TOWA whose telephone number is (571)272-8758. The examiner can normally be reached on M-F, 8:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/RTT/

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736